



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 04/14/05  
Agenda Item 4

**TO:** Planning Commission  
**FROM:** Carl T. Emura, ASLA, Associate Planner

**SUBJECT:** VARIANCE NO. PL-2005-0023 – Barbara Fairman (Applicant/Owner) - Request to Allow a Two-Bedroom, 1,100-Square-Foot “Granny” Unit, Where a One-Bedroom, 640 Square-Foot Unit Is Allowed and to Allow a Rear Stair to Extend 11’-6” into the Rear Yard Where 3 Feet is Allowed.

The Property Is Located at 1235 Westwood Street, in a Single-Family Residential (RS) Zoning District

### RECOMMENDATION

Staff recommends that the Planning Commission:

1. Find that the proposed project is Statutorily Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15270 (a), *Projects Which are Disapproved*; and
2. Deny the variance application subject to the attached findings.

### DISCUSSION

#### Background

In September 2003, the applicant obtained a building permit to build a 1,100-square-foot second-floor addition with two bedrooms, family room and bathroom above her three-bedroom, two-car garage, 1,621-square-foot home. The approved plans show a staircase connecting the first floor to the second floor and no doors or walls impeding access from the first floor to the second floor.

Prior to submittal of the application for the building permit, the applicant reviewed her plans with Planning staff. Originally, the plans did not have any interior connection between floors and a second kitchen was shown on the second floor, creating a second residential unit on the second floor. Staff advised the applicant that a second unit of this size was not permitted, and the applicant revised the plans to reflect only one large residence in compliance with the Zoning Ordinance.

In November 2004, the Building Department received a complaint during construction of the approved addition, indicating that a kitchen and rear stairs were added to the second-floor

consistent with the applicant's original plans that were rejected by City staff. These improvements were made without additional permits.

The applicant is now requesting a variance to use the full second story as a "granny unit," including exceptions to the size of the unit and the number of rooms allowed and a variance to allow the stairs to extend 11'-6" into the rear yard where only 3 feet is allowed.

### Analysis

The State Planning and Zoning Law provides the framework for establishing second units. It states that "...second units are a valuable form of housing in California. Second units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods." It goes on further to state any local agency may, by ordinance: "Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places."

The city, in conformance with the State Planning and Zoning Law, established *Section 10-1.245n. Second Dwelling Unit, Attached* ("Granny or in-law unit") in the Single-Family Residential section of the Zoning Ordinance. This section allows a second attached dwelling unit (Granny or in-law unit) but limits the unit to one bedroom, 640 square feet and does not permit additional parking spaces beyond the two covered spaces for the primary unit. The intent is to provide additional housing opportunities while maintaining the character of, and not impacting, single-family neighborhoods. Staff believes that the applicant's proposal goes beyond the intent of State law and local ordinance in the establishment of a "granny unit" and that the proposed second unit would be a full 1,100-square-foot, two-bedroom apartment. With the ground-floor residence, a duplex would be created; duplexes are not a permitted use in the Single-Family Residential District. Furthermore, the second unit would not be provided with adequate parking. Although the applicant intends to keep the interior stairway at this time, it could be easily closed off in the future.

Approval of a variance requires a determination that 1) there are special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints, 2) strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity under the same zoning classification, and 3) approval of the variance would not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.

There are no special circumstances peculiar to the property that would warrant a variance for the size of the second unit and the additional room. The property is a typical flat, rectangular, single-family residential lot at approximately 5,000 square feet. The applicant would not be deprived of privileges enjoyed by other property owners. No other property owner in the vicinity or single-family residential district has been allowed to exceed one bedroom and 640 square feet for a "Granny Unit". Furthermore, approving the variance would be granting the applicant a special privilege not afforded to other homeowners and would set a detrimental precedent where

others could bypass the zoning and parking requirements to establish a separate apartment of a size more appropriate in a multi-family residential district.

Similarly, there are no special circumstances applicable to the property that would warrant a variance for the rear stairs to extend 11'-6" into the rear yard when it could be accommodated by placing it parallel to the deck rather than perpendicular. The applicant has approximately 7 feet from the side of the deck to accommodate an L-shaped stairs. Again approving the variance for the stairs would be granting the applicant a special privilege not afforded to other homeowners. It also makes it easier to again circumvent the ordinance and create a duplex.

The applicant states that the addition was built so that she could maintain her independence from her daughter and granddaughter while still sharing a house together and the additional bedroom would be for a live-in nurse should she require one in the future. The applicant feels that her independence is appropriate justification for the variances. Staff believes that the applicant can achieve her desires for independence and long-term care while complying with the zoning ordinance. The applicant was aware of the requirements for a "granny unit" prior to her application for a building permit and chose not to apply for a variance prior to constructing her addition. Instead, the applicant has made subsequent field changes without permits. The second floor could be arranged such that the rear portion of the addition complies with City requirements for a "granny unit;" the front portion could retain the internal connection to, and remain part of, the ground-floor residence. The applicant may intend to occupy the entire structure with only family members or care-givers, however, future owners could operate it as a duplex.

If the Planning Commission is supportive of the variance, the application would have to be returned for review and adoption of appropriate findings and conditions of approval. If the Planning Commission does not approve the application, the applicant could either appeal the decision to the City Council or restore the second floor addition consistent with City requirements.

## **ENVIRONMENTAL REVIEW**

The proposed project is Statutorily Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15270 (a), *Projects Which are Disapproved*.

## **PUBLIC NOTICE**

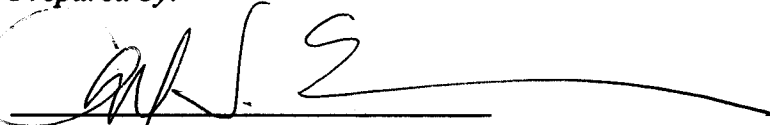
On April 4, 2005, a Notice of Public Hearing for the Planning Commission meeting was sent to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Notice was also provided to the Harder-Tennyson Community Organization, South Hayward Neighborhood Group, and the Harder-Tennyson Task Force.

Two e-mails were received from neighbors who objected to the proposal. They indicated that approving the variance would set a detrimental precedent and change the character of the neighborhood. One also expressed concern about the unit later being used as a rental.

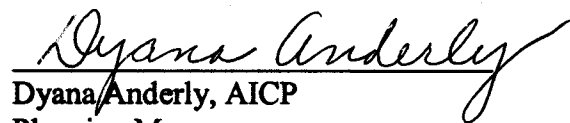
## **CONCLUSION**

There are no special circumstances regarding the property and approving the variance would be granting a special privilege not afforded to others. Therefore staff recommends denial of the application.

*Prepared by:*

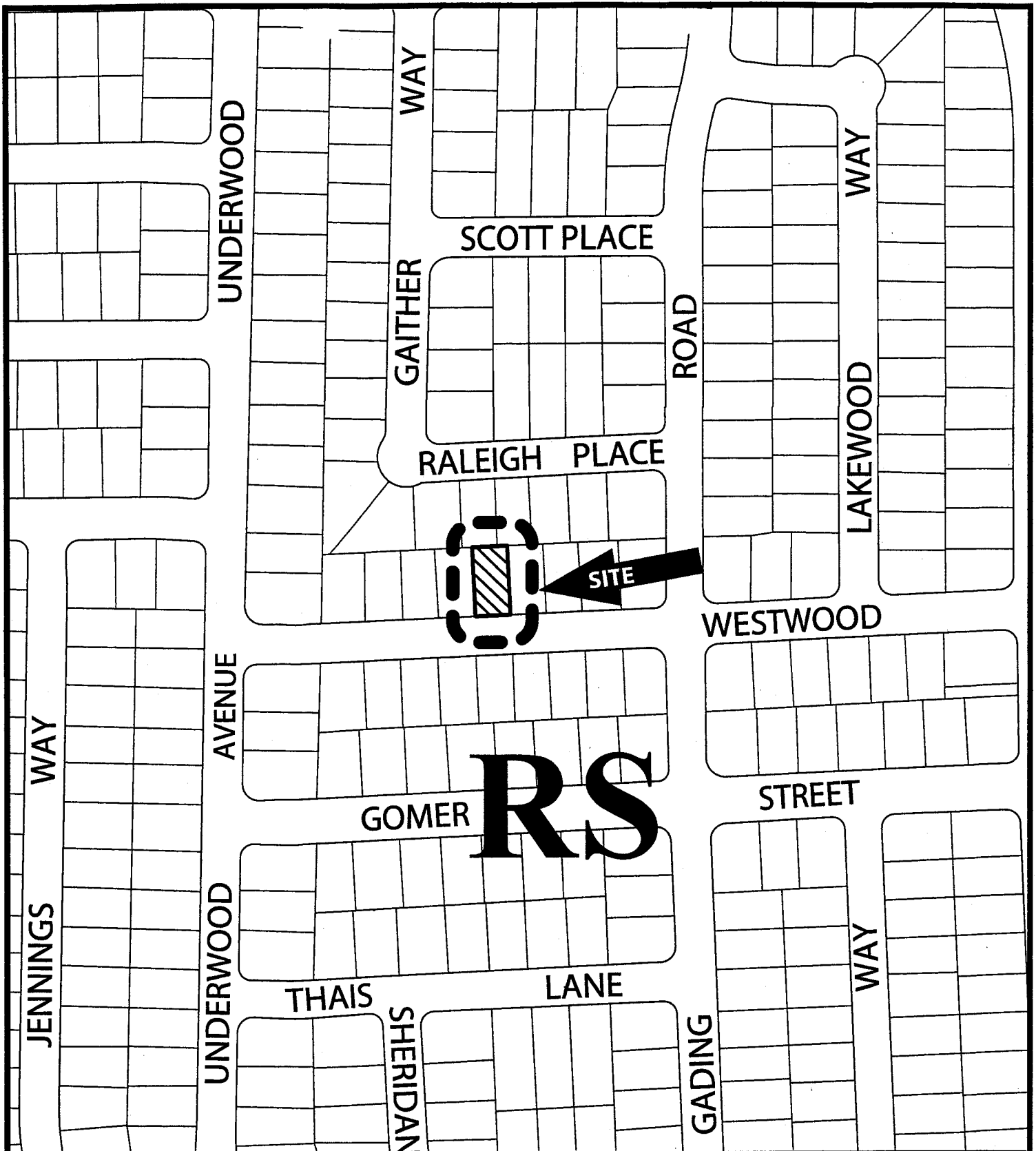
  
Carl T. Emura, ASLA  
Associate Planner

*Recommended by:*

  
Dyana Anderly, AICP  
Planning Manager

**Attachments:**

- A. Area & Zoning Map
- B. Findings for Denial
- C. Letter from Applicant  
Plans



**Area & Zoning Map**

PL-2005-0023 VAR

Address: 1235 Westwood Street

Applicant: Barbara Fairman

Owner: Barbara Fairman

RS-Single-Family Residential,RSB4,RSB6



**CITY OF HAYWARD  
PLANNING DIVISION  
VARIANCE DENIAL**

**April 14, 2005**

**Variance No. PL-2005-0023** – Request to allow a two bedroom, 1,100 square foot “granny” unit, where a one bedroom, 640 square foot unit is allowed and to allow a rear stair to extend 11’-6” into the rear yard where 3 feet is allowed.

The Property is Located at 1235 Westwood Street, in a Single-Family Residential (RS) Zoning District

**Findings for Denial:**

- A. Variance No. PL 2005-0023, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is statutorily exempt from CEQA review under Section 15270 (a), Projects Which are Disapproved.
- B. There are no special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints. The property is a typical single-family lot with no unusual topography.
- C. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other property in the vicinity under the same zoning classification in that no other in-law unit has exceeded one bedroom and 640 square feet. Anything larger than 640 square feet is a duplex, which is not allowed in the Single-Family Residential District and goes beyond the intent of the State Planning and Zoning Law for providing for a separate unit for an elderly family member. In addition the stairs could be designed to extend not more than 3 feet into the rear setback.
- D. The variance would constitute granting a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated in that no other permitted in-law unit been allowed to exceed one bedroom and 640 square feet. Anything larger than 640 square feet is a duplex, which is not allowed in the Single-Family Residential District and goes beyond the intent of the State Planning and Zoning Law for providing for separate unit for an elderly family member. In addition the stairs could be designed to extend not more than 3 feet into the rear setback.

## Planning Division

777 Bth Hayward Cal 94541  
510-583-4200.

I hire Gerald W Vallan, 11-11-02 - he was terminated 8-11-03, I wish someone told me he was not able to do the Plans. With Gerald and Hayward Planning Division, I put out over \$4000.00.

The 2<sup>nd</sup> Contractor Howard Ridge was hire 8-30-03 - , sometime in October I would not have any more Bissnuse with him, every time I turn around he wanted me to pay for something, I paid for the Stairs in the House, Electric, Painting down Stairs, there was holes in the ceiling in every Room. He try to get me to pay for the foundation, He would call me when he was Drunk when he got the framing in the Roof - windows in after that it was hell to get him to finish, when he got someone to do the work, they would work maybe 4 hrs - maybe something was done twice a week.

If it came down to it He owe me, after it was done I had to hire Electrician Plugs - Simple detector were not wire, they work on Batteries, got a Roofer I had a leak in the garage by Electric Box, I did not get treated Windows like I have down Stairs

I understand a Inlaw apartment is 620 sq ft I have 945 sq ft almost 1/3 sq ft the Stairs take up

I have Long Care Ins. if any time I might need someone to take care of me, that is why I have 2 Bed Rooms

The reason I want a Kitchen, so I can keep my Independent - I have 3 Kids 2 of them, I have had one or the other back home, Right now my Daughter

44yr old + my 22yr Granddaughter with me  
we have had bad times + with the building,  
they left me for 5 months they came back.

It would be a nightmare to cook down  
stairs with my kids. I want Peace + quite  
at my age

Howard Ridge the contractor turn  
me, He call, told me, and he put a lien on the  
house.

Please Please let me have my  
Kitchen

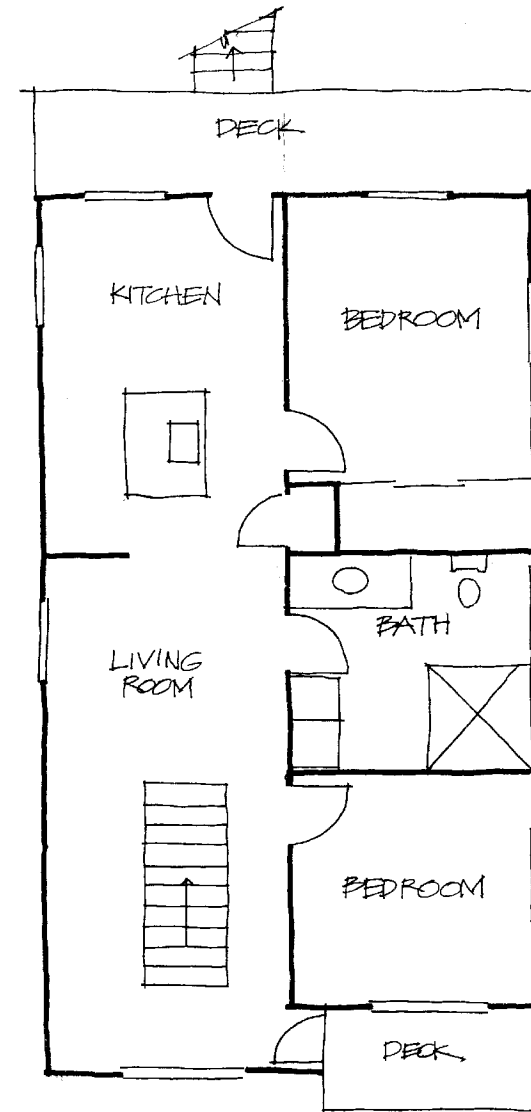
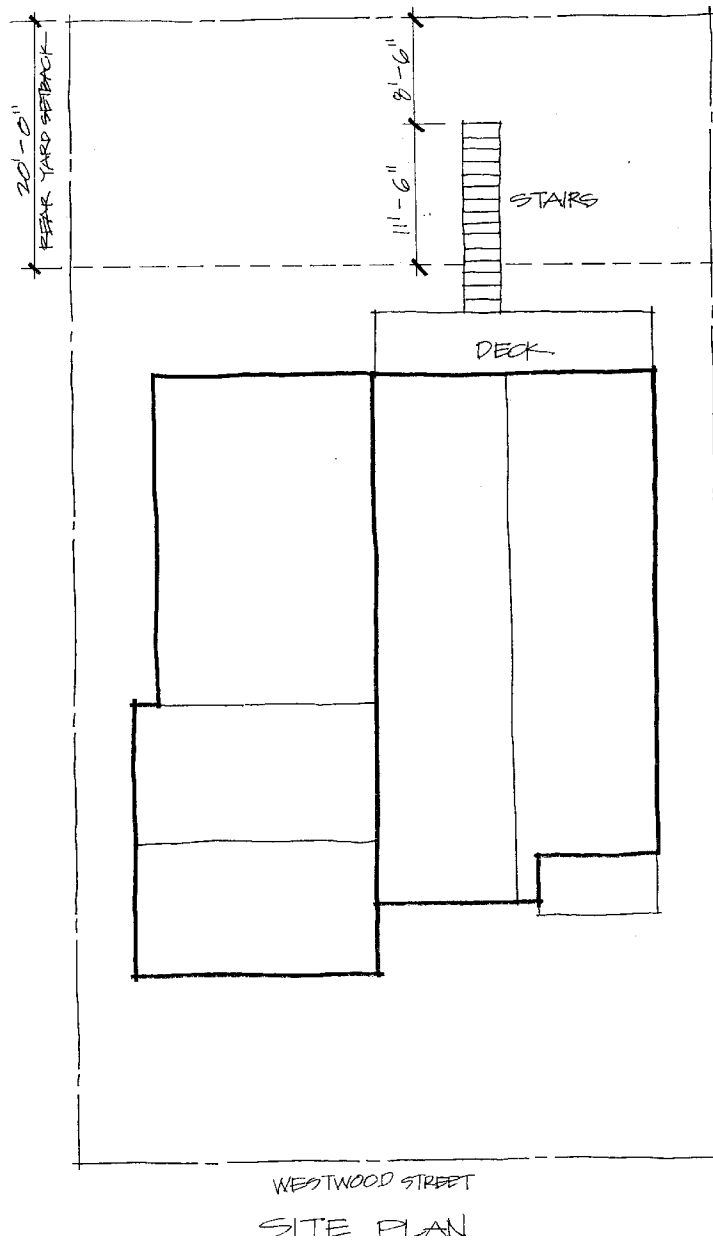
Barbara A Zaurman  
1235 Westwood St  
Hayward Cal 94544  
510-782-0672

Dec. 15-2004.

PS We bought the House in 1958,  
When the time Comes I will die here  
I will not be sent to a nursing home.

Howard Ridge had Colin Dunn Lic # 755893





GRANNY UNIT  
FLOOR PLAN (2nd FL)  
VAR PL-2005-0023



EXISTING FIRST FLOOR PLAN